Carter v. Cheyenne Public Library Doc. 5

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
OCT 25 2007
Stephan Harris, Clerk
Cheyenne

United States District Court
For The District of Wyoming

JERRY CARTER, Plaintiff,	)	
vs.	)	Civil No. 07–CV–230–J
THE CHEYENNE PUBLIC LIBRARY, ALL ITS EMPLOYEES, AGENTS OR VOLUNTEERS, BOARD AND DIRECTORS Defendants.	)	

ORDER DISMISSING PLAINTIFF'S PLEADINGS AND ALL UNDERLYING MOTIONS

The above-entitled matter, having come before the Court on plaintiff's "Emergency" (sic) Petition for Permanent Injunction, Seeking Temporary Restraining Order and Tort Relief, and Preliminary Injunction As a Result of U.S. Civil Rights Violations From Crimes Committed, and the Court being fully advised in the premises, FINDS:

1. Plaintiff brings civil rights claims stemming from alleged false reports made by defendant Laramie County Public Library. Specifically, plaintiff alleges defendants made "false reports" that plaintiff took a gun and a bomb into the Wyoming Capitol Building. Plaintiff bases his suspicions on past encounters he has had with library employees, during which he alleges he has received little assistance in using the library's computers, has discussed his impending senatorial

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campaign with employees, and has debated the merits and implications of the recent arrest of Idaho Senator Larry Craig with employees. As a result of these encounters, plaintiff's access to the library was terminated, and plaintiff alleges the library staff has a premeditated plan to violate his civil rights, thereby making him the target of "some evil thick skulled degenerates that would do anything to take [plaintiff] down." Plaintiff contends that these acts violate his First, Fourth, Fifth Sixth, Eighth, Ninth, Thirteenth, and Fourteenth Amendment rights and seeks a restraining order against defendants, to subpoena defendants, and to gather evidence to build support for plaintiff's charges against the library.

2. Under 28 U.S.C. § 1915, a court may allow a plaintiff unable to pay necessary litigation fees to proceed *in forma pauperis*. *See generally* 28 U.S.C. § 1915 (2006). While this statute is designed to "ensure that indigent litigants have meaningful access to the federal courts," it also balances the need to prevent such litigants from filing "frivolous, malicious, or repetitive lawsuits" so as to spare prospective defendants the "inconvenience and expense of answering such complaints." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). To that end, § 1915(e)(2) states that a court "shall dismiss the case at any time if the court determines that: (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2) (2006). This provision mandates that a court shall dismiss a frivolous claim *sua sponte*. *See* 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 12.34[7][e] (3d

ed. 2007) (noting that this portion of the statute "appears to have stripped the court of its discretion to refuse to act sua sponte").

A pleading is "frivolous" under § 1915(e)(2) "where it lacks an arguable basis either in law or fact." *Neitzke*, 490 U.S. at 325. The term frivolous "when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.; accord Hall v. Bellmon*, 935 F.2d 1106, 1108 (10th Cir. 1991).

3. Plaintiff's pleading qualifies as frivolous. Plaintiff's pleading contains rambling, sometimes incoherent allegations and statements. Plaintiff's claim relates to non-actionable encounters between plaintiff and others; plaintiff attempts to assert civil rights violations for every encounter with others he deems to be disagreeable. Furthermore, plaintiff fails to allege sufficient facts but instead relies upon bald allegations concerning his suspicions, fears, and assumptions relating to suspected conspiracies and threats. Without any demonstration that he suffered a legally cognizable harm, plaintiff's contentions are non-actionable and frivolous. *See Wilson v. Yaklich*, 148 F.3d 596, 601 (3rd Cir. 1998) (finding prisoner's claim that prison guards failed to protect him from other inmates' threats to be frivolous because there was no allegation that he suffered any harm); *Green v. White*, 616 F.2d 1054, 1055 (8th Cir. 1980) (limiting petitioner's *in forma pauperis* complaints to specific allegations of physical harm or threats). Even were the Court to assume plaintiff's allegations to be true, plaintiff fails to state a claim upon which relief may be granted. In short, plaintiff's complaint contains nothing more than verbose ranting.

Moreover, plaintiff's desultory pleading fails to comply with Federal Rule of Civil Procedure

8, which states that a pleading sh all be "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. PRO. 8(a).

4. In addition, the Court finds that plaintiff runs afoul of Federal Rule of Civil Procedure 11. That rule stipulates that a party shall not submit a pleading to the Court "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation" and that all allegations and claims "have evidentiary support" or "are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." FED. R. CIV. PRO. 11(b)(1)-(3). The Court concludes that the submission to the Court of twenty separate pleadings containing baseless and frivolous claims against numerous individuals and entities directly contravenes Rule 11. The Court may issue monetary or other sanctions for failure to abide by the rule, even to an *in forma pauperis* plaintiff. *See* 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 11.23[6][c] (3d ed. 2007) (stating that these sanctions apply to *pro se* and represented litigants alike, for "there are limits to the courts' indulgence toward pro se litigants"). Though the Court declines to impose sanctions on the plaintiff for violating Rule 11, it admonishes the plaintiff that it will consider the full panoply of sanctions should he fail to abide by this warning.

5. Courts have little patience for meritless complaints. "Frivolous cases harm the justice system" by consuming "inordinate amounts of scarce judicial resources" and causing valid complaints to "suffer from delay and all the negative aspects of delay." *Holloway v. Hornsby*, 23 F.3d 944, 946 (5th Cir. 1994). Indeed, the purpose of § 1915(e) is to "discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not

initiate." *Hall*, 935 F.2d at 1008. To prevent plaintiff from continuing to abuse the judicial process by filing further frivolous pleadings in addition to the twenty he has already submitted, the Court decides it should limit his ability to submit claims in the future. Therefore, the plaintiff cannot present to the Clerk of Court and the Clerk of Court should not accept any further pleadings submitted by plaintiff unless and until he has received prior written permission from the Court to make such a submission. *See Holloway*, 23 F.3d at 946 (admonishing plaintiff for filing nineteen frivolous actions and preventing him from filing any more complaints without specific permission from the district court).

NOW, THEREFORE, IT IS ORDERED that plaintiff's "Emergency" (sic) Petition for Permanent Injunction, Seeking Temporary Restraining Order and Tort Relief, and Preliminary Injunction As a Result of U.S. Civil Rights Violations From Crimes Committed is DISMISSED WITH PREJUDICE. It is

FURTHER ORDERED that plaintiff may not submit any pleading to the Court without the Court's written prior permission on or after October 22, 2007.

Dated this 25th day of October, 2007.

Alan B. Johnson
United States District Court Judge